

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL VACANCY ON THE)
BOARD OF COMMISSIONERS OF HENRY)
COUNTY WATER DISTRICT NO. 2) CASE NO. 2012-00450

ORDER

Henry County Water District No. 2 ("Henry District No. 2") has advised the Commission in writing of the existence of a vacancy on its Board of Commissioners due to the expiration of the term of Water District Commissioner Merle Brewer. By this Order, we accept the recommendations of Henry County Fiscal Court and appoint Ms. Denise Coombs to fill the vacancy.

Henry District No. 2, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water for compensation to approximately 6,271 customers in Carroll, Henry, Oldham, Shelby, and Trimble Counties, Kentucky.¹ As of December 31, 2011, Henry District No. 2 had total assets of \$16,789,542.² For the calendar year ending December 31, 2011, it had total operating revenues of 3,383,411.³

A ten-member Board of Commissioners administers Henry District No. 2 and has the statutory responsibility to "control and manage" the water district's affairs.⁴ On

¹ *Annual Report of Henry County Water District No. 2 to the Public Service Commission of Kentucky for the Year Ended December 31, 2011 ("Annual Report")* at 5 and 27.

² *Annual Report* at 7. This amount does not include deferred debits of \$366,211.

³ *Id.* at 11.

⁴ KRS 74.020(1).

February 11, 2012, Merle Brewer, Chairman of Henry District No. 2's Board of Commissioners, died.⁵ His term as commissioner expired the following day. As of May 15, 2012, a successor for Mr. Brewer had not been appointed or approved. Subsequently, a committee, which included members of Henry District No. 2's Board of Commissioners, recommended the appointment of Denise Coombs to fill the vacancy. Henry County Judge/Executive John L. Brent then appointed Ms. Coombs. On August 21, 2012, a majority of the members of Henry County Fiscal Court voted to approve the appointment.⁶

As the vacancy created by Mr. Brewer's death and the expiration of his term had not been filled by May 15, 2012, the statutory duty and the exclusive authority to fill the vacancy shifted from the Henry County Judge/Executive and Henry County Fiscal Court to the Commission. KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

While the Henry County Judge/Executive and Henry County Fiscal Court may reach agreement on the vacant position, they lacked the authority to fill the vacancy once it remained unfilled for more than 90 days. Any action on their part to appoint and

⁵ Letter from James Simpson, Chief Operating Officer, Henry County Water District No. 2, to Jeff Derouen, Executive Director, Public Service Commission (Mar. 19, 2012).

⁶ Minutes of Reg. Meeting, Henry County Ky. Fiscal Court (Aug. 21, 2012), available at <http://www.henrycountygov.com/PDFminutes/August21-2012-Minutes.pdf>.

approve a candidate at that time had limited legal effect and constituted only a recommendation to the Commission.⁷

Notwithstanding that appointment authority has been vested in the Commission in such circumstances, deference should be afforded to local officials. We have previously noted:

While the Commission has exclusive authority to fill vacancies that exist for 90 days or more, we will defer to the local elected officials in those instances where the local appointing and approval authorities have reached agreement on a candidate. Absent unusual circumstances that raise clear concerns about an agreed candidate's qualifications, such deference is appropriate because local officials generally have a better understanding of the candidates' qualifications and of the water district's needs and because these officials are directly accountable to the water district's customers through the ballot box.⁸

Based upon our review of the evidence of record, we find no information to suggest that Ms. Coombs is unqualified to serve in the designated position. We further find that she resides within Henry District No. 2's territory and possesses adequate education, business skills, and experience to perform the duties of water district commissioner and that she should be appointed and approved to fill the vacant position for the recommended term.

IT IS THEREFORE ORDERED that Denise Coombs is appointed to fill the existing vacancy on Henry District No. 2's Board of Commissioners. Her term shall expire on February 13, 2016.

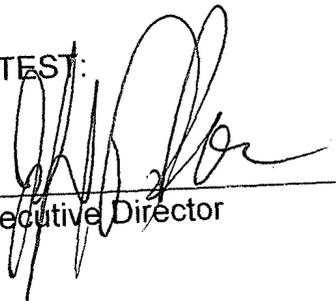
⁷ See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009).

⁸ Case No. 2007-00493, *Request for Assistance in the Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008) at 4-5.

By the Commission

ENTERED SM
NOV 21 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2012-00450

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